

Comments and Questions: Final Report of the Joint Committee on Consolidation (April 10, 2013)

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These comments are submitted with the recognition of the hard work performed by the Joint Committee and with respect for my colleagues at the Commission. The comments provided here are in addition to those of David Strong (page 25 of the Report), and are not meant to be all-inclusive.

1. An effective case for merger has not been made.

The Final Report of the Joint Committee on Consolidation (the “Report”) does not provide a significant amount of factual material on which to base its conclusions; the factual information they do offer is difficult to evaluate, as no specific references are provided and some may be erroneously characterized. The section on The Case for Merger (p. 4) makes reference to only one “study,” for which no citation is provided. The study in question, apparently prepared by the National Association of Development Organizations (NADO), is said to have criticized Vermont for not having regional planning and development under one roof. The Report uses this finding as part of the basis for its conclusion that the Central Vermont Regional Planning Commission (CVRPC) and the Central Vermont Economic Development Corporation (CVEDC) should merge into one organization.

An online search for this “study” yielded one document prepared by NADO that talked about Vermont’s regional planning commissions and development: *Vermont Association of Planning and Development Agencies – 2011 Strategic Assessment* (“2011 Strategic Assessment” at <http://www.vapda.org/Publications/StatewideStrategicAssessment.pdf>). This document found that the Regional Planning Commissions (RPCs) generally performed their functions well, but noted that they should take on more of a role in economic development. Fair enough, if true. However, this document did not necessarily recommend merger of RPCs and Regional Development Corporations (RDCs), but in fact presented the options of working in partnership or of co-location (“under one roof”) of the two regional organizations. It also recommended periodic joint meetings of the RPC and the policy boards of other regional organizations, including the RDCs. (See pages 19, 21, and 25 of the 2011 Strategic Assessment). In fact many of the multi-state success stories referenced in the study include regional planning commissions or councils that partnered or formed consortia with other organizations, including RDCs, when undertaking development tasks (see Florida, Massachusetts, New Hampshire, Ohio, and Virginia, for example on pages 28, 31, 33, 35, and 38).

An additional point about the unidentified NADO study referred to in the Report: The Committee’s Report quotes the NADO study as saying: that “[Vermont] appears to lack the organizational capacity, diversity of programs and services, financial resources and organizational scale necessary ... to realistically drive regional innovation and growth on a consistent basis statewide.” If in fact the 2011 Strategic Assessment is the study they refer to, the statement is quoted incorrectly in the Committee’s Report. The 2011

Strategic Assessment states that “*The network of Regional Development Corporations appears to lack the organizational capacity, diversity of services, financial resources and organizational scale necessary, based on the NADO research team’s external interviews and knowledge of national counterparts, to realistically drive regional innovation and growth by themselves*” (2011 Strategic Assessment at p. 8). This statement was meant to be a criticism of the capabilities of the statewide system of RDCs. This would suggest that the RDCs in Vermont may not be thriving; merger may not solve that problem. If they haven’t been significantly effective on economic development issues as a stand-alone entity, then why assume that they will improve their performance as part of a merged entity?¹ In fact a merger may make both organizations weaker. As was pointed out by David Strong in the Report, if the problem for economic development is a lack of resources, that situation must be improved at the state and federal level. It is unlikely to be improved by merging these two organizations, especially when one of the goals is to save money. (The Report also doesn’t seem to show that the merger would actually save money).

It should be noted that the only study cited was from NADO, a national organization seemingly focused primarily on economic development. But where are the studies, from more diverse sources, showing whether or not the planning functions (including those for human needs and the environment) would improve, remain strong, or not be diminished by merger—especially in Central Vermont? There were no studies cited to show that merger would in fact make the new entity a more effective planning organization in all respects. Is the Northeastern Vermont Development Association (NVDA), which they cite in the Report as a model organization, highly effective at planning for the environment and communities, as well as for economic development?

The Committee’s Report asserts that planning and development are “at loggerheads” and need to be improved by merger. This assertion was not accompanied by specific examples of the perceived problems or suggested improvements. It is difficult to determine from a reading of the Report what aspects of the current situation were thought to constitute “loggerheads” or what caused it. There is a need, as recognized by the state legislature, for planning for the community and the environment, in addition to economic growth. Does the development community agree that all three aspects are important?

If we are to assess the “case for merger” we will need more information and clearer evidence on which to base the merger decision. There are other ways to potentially improve the planning and economic development processes in Vermont, including collaborations among RPCs and RDCs. It’s difficult to see the need for the drastic step of merger as is recommended here.

¹ If one of the reasons for merger is to make CVEDC more attractive for purposes of state performance contracts under Title 24, Chapter 76 (the statute cited in the Report), merger is not necessary. The contract award system allows for joint proposals from RDCs and RPCs. See <http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=24&Chapter=076>

2. The creation of a 35-member development committee and a 9-member development voting block (plus the addition of three at-large members) diminishes the control of member towns on the commission.

The Report's proposed Bylaws, Article VII (p. 21) create a new 35-member Economic Development Committee (EDC) with significant power and with seemingly no oversight by the newly formed Commission, its town representatives, or its Boards: *"The Economic Development Committee shall be self-perpetuating: it shall have the sole power and responsibility to fill vacancies on the Economic Development Committee. The Economic Development Committee's duties shall include but not be limited to the following: appointing annually the nine Development Directors; and overseeing other economic development activity in the area served."*

In addition, Article XIV of the proposed Bylaws states that *"No amendment affecting membership of the Economic Development Committee or its participation on the Board or Committees of the Commission shall be adopted without the approval of the Economic Development Committee."*

To summarize: The EDC has the sole power to appoint and remove the nine new Development Directors. The new Development Directors have voting rights on the proposed Commission. But these nine new Directors can apparently function as they see fit with no concern about being removed by the Commission for any reason. They also are under no obligation to be responsive to the needs of the towns represented on the Commission. The absence of accountability in this structural arrangement is somewhat astounding. It is difficult to see how the CVRPC, or any other organization, could agree to such an arrangement. It certainly is not something I could recommend to my town.

If the CVEDC feels so strongly about keeping their power and autonomy, then why merge? Why not just form a partnership or collaboration of some kind, as suggested earlier?

As has been pointed out in the Report, this nine-member voting block has the potential to dilute control of policy by the member towns—especially when the additional three at-large members are taken into consideration.

Going forward, the Regional Planning Commission will be shaping what our region will look like. In fact, the Regional Planning Commissions are likely to be tasked with deciding where commercial wind farms should and should not go. It is imperative that all municipalities be on an equal footing when these types of issues come up. If there are 12 members on the Commission who do not answer to their municipalities, and thus do not have their towns' interests at heart, these types of decisions may end up being made in a way that runs roughshod over the priorities of the member towns. Alternatively, if these additional representatives disproportionately come from one or a few towns, they could form a voting block that shifts the outcome to favor their towns at the expense of other towns.

There are clearly potential benefits of having a permanent committee for economic development at the CVRPC (similar perhaps to the ones we now have for Brownfields or Transportation). However, there is no compelling argument for a permanent committee that also appoints its own permanent voting block. The report admits that the CVRPC now includes “many business oriented persons” – this seems to suggest that the current membership of the CVRPC includes a diversity of views and interests. Are we to now give one group’s interests more weight by increasing their votes and diluting those of the towns? The logical outcome of this line of reasoning is that every other group with an interest in planning outcomes should have its own standing committee and its own share of additional voting members.

Finally, if these Bylaws are adopted, there is no oversight or control over the EDC members, which means there is no turning back. If folding the CVEDC into the CVRPC fails, the only obvious option is to dissolve the entire Commission.

3. The Report’s proposed Bylaws lack reference to protections for the environment or natural resources.

The Report and its proposed Bylaws seem to indicate a shift away from planning that includes, as one of its primary goals, environmental quality and conservation (as required by Vermont statutes), and towards a focus on development. While the statute governing regional planning commissions includes numerous references to requirements in planning for protection of the environment and natural resources, the Report’s proposed Bylaws make no actual mention of these ideals. The statute’s goals include, for example: “To provide a strong and diverse economy that provides satisfying and rewarding job opportunities and that maintains high environmental standards, and to expand economic opportunities in areas with high unemployment or low per capita incomes. ... To identify, protect and preserve important natural and historic features of the Vermont landscape, including: (A) significant natural and fragile areas, (B) outstanding water resources, including lakes, rivers, aquifers, shorelands and wetlands, (C) significant scenic roads, waterways and views; important historic structures, sites, or districts, archaeological sites and archaeologically sensitive areas. ... To maintain and improve the quality of air, water, wildlife and land resources.”²

Curiously, the proposed Bylaws include some of the language from the statutory duties of regional planning commissions, but modifies the language of the statute in some cases.³ The result, intentional or not, is Bylaws that lack an explicit reference to protection of the environment or natural resources.

² See Title 24 Ch. 117, sections 4302(c)(2), (5), and (6) at <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=24&Chapter=117&Section=04302>

³ See statutory sections 4345a and 4345, at <http://www.leg.state.vt.us/statutes/sections.cfm?Title=24&Chapter=117>

For example:

- The Powers and Duties section of the Report's proposed Bylaws (#4) includes: *"Cooperating with the planning, legislative or executive authorities of neighboring regions, counties, or municipalities to promote coordination between the development in the region and adjoining or neighboring regions."*
- But the language in the Duties section of the statute includes "conservation" as well as development; the statute requires that the Regional Planning Commission: *"Cooperate with the planning, legislative, or executive authorities of neighboring states, regions, counties, or municipalities to promote coordination of planning for, conservation and development of the region and adjoining or neighboring territory."* (See section 4345a(4)). Keep in mind that this is "shall" and not "may" in the statute, an important distinction. Why omit "conservation" when it is required by statute?

An additional example:

- The Report's proposed Bylaws section on Powers and Duties (#6) includes: *"Undertaking studies and making recommendations on economic, industrial, commercial, and social development; land development; transportation; historic and scenic preservation; the conservation of energy; and the development of renewable energy resources."*
- But the statute reads that a regional planning commission may: *"Undertake studies and make recommendations on land development, urban renewal, transportation, economic, industrial, commercial, and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources, state capital investment plans, and wetland protection."* (See section 4345(6)). Apparently wetland protection will no longer be a function of regional planning in central Vermont.

There are other differences between the report's Powers and Duties and those of the statute. The statute states that the Regional Planning Commission may: *"Carry out, with the cooperation of municipalities within the region, economic development programs for the appropriate development, improvement, protection, and preservation of the region's physical and human resources."* The proposed Bylaws change this language to: *"Administering economic development programs for the appropriate improvement, protection and preservation of the region's resources."* "Resources" is not defined in the Bylaws. Do they include fragile ecosystems and wetlands? There is no language to suggest that they do.

Keep in mind that the statute has a "Duties" section (4345a) that requires all of the duties listed there be carried out by a regional planning commission. But the Report's proposed Bylaws have a "Powers and Duties" section. A "power" is not the same as a "duty." One is not required to use a power, but a duty must be performed. It's difficult to see why these are listed as powers and duties. And which are which? Are all of them optional, or are some and not others?

The last two items (#'s 16 and 17) of the Report's Powers and Duties section include the statement that the new organization will carry out all duties of a regional planning commission as per 24 VSA ch. 117, and perform other acts and functions that are necessary or appropriate to fulfill the duties and obligations of the law and the proposed Bylaws. Apparently these items were included in the proposed Bylaws to keep the new organization in line with what the statute requires of a planning commission for various reasons, including eligibility for certain grants. The wording of this section also maintains the basic form of a regional planning commission—despite the changes in the composition and mission of the new organization—resulting in the fact that merging to form the new organization would not entail first dissolving the CVRPC (which would require a unanimous vote by the current Commissioners).

Why all the effort to list and modify selected statutory duties in the Bylaws? Why not just make reference to the statute and say that the organization will carry out all of the duties of a regional planning commission listed there? Any duties or powers that it was felt were necessary for the Commission to also engage in economic development activities could simply have been added to those duties. The most plausible answer (absent an explicit explanation to the contrary) is that the Report's Bylaws are an accurate list of what the Consolidation Committee members intended to be the focus of the newly formed organization going forward. And based on the proposed Bylaws, that focus would not seem to include the protection of the environment or natural resources.

Planning for growth should strive to balance what is good for the community, the economy, and the environment, as Vermont's laws indicate. I do not see those principles reflected in this proposal for consolidation.⁴

4. It is not clear whether the Consolidation Committee members were impartial as to whether to consolidate, or whether the Committee was made up primarily of members who favored consolidation at the outset.

The make-up of the Consolidation Committee is important from the standpoint of knowing how much weight to give the conclusions in this Report, especially given that there is not much hard evidence offered to support its conclusions. I would need to be persuaded that the Committee members had a diversity of views as regards the question of whether to consolidate, and all were given significant weight.

The January 2012 minutes of the CVRPC stated that: "Concern was expressed that the joint committee might be biased toward consolidating. It was pointed out that the final decision will be made by the Commission and towns." I believe the responsibility referred to in the latter sentence should be taken very seriously.

⁴ The Bylaws also state that the legal bases for the new organization include 10 VSA, Chapter 12 (in addition to the planning statute of 24 VSA, Chapter 117). Chapter 12 governs the Vermont Economic Development Authority. It is unclear which provisions of this law influenced the proposed Bylaws; knowing that would help sort out what the primary focus and function of the new organization was likely to be. (See <http://www.leg.state.vt.us/statutes/sections.cfm?Title=10&Chapter=012>).

5. Issues and questions.

The Committee should make available any studies or materials used as the basis of its conclusions.

The Joint Committee on Consolidation should give its reasons for each item in the Report's proposed Bylaws. If CVRPC votes to consolidate, the new Bylaws should be written by the Commission as a whole, with the bulk of the work being carried out by a subcommittee of the Commission. These proposed Bylaws should not be adopted as proposed.

What are the reasons for CVEDC wanting to merge with the CVRPC? Do they need CVRPC to help make them a more viable organization, both financially and effectively?

The accounts of the CVEDC should be looked at if they have not been already. Is the CVRPC taking on a risk by merging them into its organization?

Is there really a problem with planning that needs to be solved (provide sources that document problems), and is consolidation the solution?

How would the various planning functions at CVRPC be impacted by merging with CVEDC?

Other forms of collaboration, aside from merger, between CVEDC and CVRPC should be explored.